IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.2794 OF 2003

Kilfire Premises Co-operative Society Ltd. ..Petitioner.

Vs.

The Municipal Corporation of Greater Mumbai & anr. ..Respondents.

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Mr. Nitin Muley for the Petitioner.
Mrs. A.R. Joshi for the BMC.

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CORAM: DR. D.Y. CHANDRACHUD, J.

11th September, 2006.

P.C. :

1. This Petition has been instituted by a co-operative society registered under the Maharashtra Co-operative Societies Act, 1960 for questioning the legality and validity of a warrant of attachment dated 19th March, 2003 and an auction notice dated 13th September, 2003 issued by the Municipal Corporation of Greater Mumbai. This action has been taken by the Municipal Corporation for the recovery of arrears of property taxes. The members of the Petitioner are holders of commercial premises forming part of certain immovable property bearing Plot No.C-17,

Dalia Industrial Area, Andheri (West), Mumbai 400 053. The Second Respondent is a builder who had constructed upon the land. The co-operative society was registered on 23rd May, 2002. On 23rd September, 2002 the Assistant Assessor and Collector of the Municipal Corporation addressed a letter to the Second Respondent demanding arrears of property taxes amounting in all to Rs.6,08,613.43. The Petitioner addressed a letter to the Second Respondent on 1st October, 2002 calling upon the Second Respondent to pay all the arrears prior to the date on which the society came to be registered. Further letters were addressed by the Petitioner to the Assessor and Collector on 1st October, 2002 and on 29th January, 2003. According to the Petitioner, the liability to pay the dues on account of property taxes would have to be fastened either on the builder or on the individual purchasers of commercial premises since the Petitioner cannot recover the dues for the period prior to the registration of the society. An attachment was levied by the Municipal Corporation on 19th March, 2003 for non payment of property taxes for the period from 1st April, 2002 to 30th September, 2002. Eventually, the Municipal Corporation issued a notice notifying the auction sale of the property on 29th

September, 2003. That led to the institution of the present proceedings.

2. On 26th September, 2003 a learned Single Judge of this Court restrained the Municipal Corporation from selling the property in pursuance of the auction notice subject to the Petitioner depositing a sum of Rs.5,70,203/- On 17th December, 2003 this Court was informed that the amount has been deposited.

3. The Municipal Corporation has filed affidavits dated 15th December, 2003 and 27th February, 2004 in these proceedings. The Municipal Corporation has stated that under the inspection book maintained by the field inspector, Smt. Vinodini Sanghavi who is a partner of the Second Respondent is reflected as the owner of the property assessed under No. KLW-5611/ (c-17)/ S. No.41, Plot No.C-17. The entry is dated 4th December, 1977. The Municipal Corporation has stated that the bills were accordingly served on the owner. The Municipal Corporation has adverted to the provisions of Section 146 of the Mumbai Municipal Corporation Act 1888 under which the primary liability to pay the property taxes is

of the occupier of the property.

4. According to the Petitioner, the society was registered on 23rd May, 2002. The society claims that it took charge of the property in June 2002 and the unit holders had paid the outgoings to the builder for the period between April and September 2002. The dispute between the Petitioner and the builder cannot be resolved in these proceedings under Article 226. Several disputed questions of fact would arise on whether, for what period and what amounts, if any were paid to the Second Respondent.

5. At the hearing of the present proceedings, counsel appearing for the Petitioner has relied upon the provisions of Section 209-A of the Mumbai Municipal Corporation Act, 1888 which provides as follows :

> "209A. When tenant-members may be held liable for payment of property taxes due from co-operative housing societies – (1) Notwithstanding anything contained in the Maharashtra Co-operative Societies Act, 1960 or any other law for the time being in force, if any sum due on account of any property tax, in respect of any property owned by a co-operative housing society registered under that Act, remains unpaid, after a bill for the same has been duly served on the society primarily liable for the payment thereof, the Commissioner may

serve a bill on each of the tenant-members of the society for such portion of the sum due as bears to the whole amount due the same ratio which the rent estimated under section 154 in respect of his tenement bears to the aggregate amount of estimated rent for the whole property.

(2) If the tenant-member fails within fifteen days from the service of any such bill to pay the amount therein claimed, the same amount may be recovered from him, as if the amount were a property tax due by him.

(3) If any sum is paid by, or recovered from, a tenant-member under this section, he shall be entitled to credit thereof in account with the society primarily liable for the payment of the same.

Explanation – For the purposes of this section, the expression "tenant-member" in the case of a tenant co-partnership co-operative society, means a member of such society to whom a tenement has been allotted by the society in the building owned by it."

6. On behalf of the Petitioner it was submitted that the Municipal Corporation must proceed to carry out assessment in respect of each of the individual units situated in the premises, in order to ensure that those members who have regularly paid their dues on account of property taxes are not made to suffer for the defaults committed by some of the occupiers. In paragraph 11 of the affidavit in rejoinder it has been stated that according to the plan approved by the Municipal Corporation, there are 25

independent units of whom some are not members of the co-operative society. A chart has been annexed at Exh. A to the affidavit in rejoinder dated 3rd February, 2004.

7. There is merit in the submission urged on behalf of the Petitioner that in view of the enabling provisions contained in Section 209-A of the Mumbai Municipal Corporation Act, 1888, it is only appropriate and proper that the Municipal Corporation should take steps as provided therein for the recovery of the arrears of property taxes. Six of the unit holders are not members of the co-operative society. Even amongst the members of the co-operative society it would not be appropriate for the Municipal Corporation to penalise those persons or unit holders who are regular in the payment of property taxes on account of a default by some others.

8. A similar issue that confronts the Court in the present case arose before this Court in **Dalpat T. Anjaria v. Municipal Corporation, Gr. Mumbai**[1]. This Court had issued interim directions recording that while on the one hand it was necessary to

1 AIR 2005 Bom. 245.

protect bonafide occupants who have purchased premises on the payment of the amounts due, on the other hand, the revenue of the Municipal Corporation has to be safeguarded. The Municipal Corporation filed an affidavit of the Deputy Assessor and Collector on 21st February, 2005 the contents whereof were extracted in the order of the Court thus :

> "The Corporation in its affidavit has stated that it is agreeable to issue individual bills to tenant-members of co-operative Societies in respect of their individual premises on the basis of the area of each unit and the rateable value thereof taking into account the ratio which the rent estimated under Section 154 in respect of each tenement bears to the aggregate amount of estimated rent for the whole property. The Municipal Corporation has, however, stated that before this course of action is adopted under Section 209A, an application should be furnished by the Society concerned with full details of the members and a statement that in the event that the Municipal Corporation is constrained to sell the individual premises of a defaulting member in realisation of the share of such member in the outstanding property taxes, the society would accept the auction purchaser as its member. Subject to the Municipal Corporation receiving a request from the Co-operative Society and the agreement of the Society to recognise the auction purchaser as a transferee member, the Municipal Corporation has agreed to assess individual flats separately and to issue separate bills in respect of each flat. In its affidavit, the Municipal Corporation has also stated that in case of any default towards the payment of property taxes, action would be taken against the individual flat owner or occupier, as the case may be, by attaching and auctioning the flat of the defaulting member alone, subject to the condition that the

> purchaser would obtain a right of membership in the society in place of the defaulting member."

This Court noted that the affidavit of the Municipal Corporation was in implementation of its obligation under Section 209A. The Court held that the object of Section 209A is to ensure that the general body of members who comprise of a co-operative housing society should not be made to suffer on account of a default of one or more of its members who fail and neglect to pay their outstandings to the Corporation. The following direction was issued by the Court to the Municipal Corporation:

> "The Municipal Corporation is now directed to follow the scheme which it has placed before the Court in terms of its obligation under Section 209A uniformly in other cases as well without requiring each individual Society to approach the Court for the grant of relief. The Municipal Corporation has agreed to do so in its affidavit dated 21st February, 2005 and its assurance is accepted and recorded."

9. Having regard to the judgment of this Court which was based on the assurance of the Municipal Corporation on affidavit, there is no reason why similar modalities should not be adopted in the present case.

10. In these circumstances, it would be appropriate that this

Petition is disposed of by directing the Municipal Corporation to make an assessment in accordance with the provisions of Section 209-A qua each of the unit holders separately. There shall be an order accordingly. The same procedure shall be adopted for the realisation of future dues. In order to enable the Municipal Corporation to carry out an assessment in terms of Section 209A, the Petitioner shall furnish to the Corporation full details of the members and the occupants together with a request for making individual assessments in terms of Section 209A. In terms of the directions issued by this Court in **Anjaria**'s case, the society shall also agree that in the event that the Municipal Corporation is constrained to sell the premises of a defaulting member in realisation of the share of such member in property taxes, the society would accept the auction purchaser as its member. The amount of Rs.5,70,603/- which was deposited with the Municipal Corporation shall be subject to such adjustment as may be warranted after individual assessments are carried out under Section 209-A. Since the entire amount to cover the warrant of attachment dated 19th March, 2003 was deposited, it is not necessary that the property should continue to remain in

attachment any further. The notice of sale that was issued consequent upon the warrant of attachment would also have to be quashed and set aside. The warrant of attachment dated 19th March, 2003 and the notice of sale published on 13th September, 2003 (Exhibits F and G) are quashed and set aside. The Petition is disposed of in terms of the aforesaid directions. However, in the facts of the case, there shall be no order as to costs.